Court No. 2

In The High Court of Uttaranchal at Nainital.

A.O. No. 110 of 2002.

U.P. State Road Transport Corporation,
Through Regional Manager, Tanakpur.
..... Opp.party No.1/Appellant.

Versus

(1)Smt. Ramkumari W/o Late Sri Ishwari Prasad,
R/o Ward No.16, Ambedkar Nagar,
Tanakpur, District-Champawat,
..... Claimants/Respondent
(2)M/s Bahrabg Builders,
Prop. Umesh Chandra Gupta,
Through Gopal Paints, Main Chowk,
Khatima,
..... Opp.Party No. 2/ Respondent.
(3)Workmen's Compensation Commissioner,
(Assistant Labour Commissioner), Haldwani
District-Nainital. ..... Respondent

Sri A.N. Sharma, learned counsel for the appellant.

Dated: 21st Aug. 2004.

Hon. P. C. Verma, J.
Hon'ble B.S. Verma, J.

These appeal have been filed the U.P.S.R.T.C. against the order dated 26.03.2002 passed by the Workmen's compensation Commissioner/Assistant Labour Commissioner, Kumaon Region, Haldwani, District - Nainital, *(hereinafter referred to as the Commissioner)* in Workmen Compensation Case nos. 17 of 2000.

2- Brief facts giving rise to this appeal are that Ishwari Dutt father of deceased Shyam Lal filed a claim petition to get compensation under the Workmen's compensation Act, 1923 on account of death of his son on

30.11.1994 at the time of his doing repair work on the floor of the workshop of the Tanakpur Depot of U.P.S.R.T.C. The petition was filed alongwith the application of delay condonation, which was subsequently allowed. Thereafter the applicant-Shyam Lal, father of the deceased, died and at his place his wife Smt. Ram Kumari was substituted by the learned Commissioner. The deceased was aged about 20 years and was getting Rs. 80/- per day as wages at the time of his death.

3. The Workmen's Compensation Commissioner after recording the evidence awarded the claim petition of the applicant/clamant for a total sum of Rs. 3,09,120.00 including the amount of interest against the Opp.party No.1-U.P.S.R.T.C. Feeling aggrieved, the U.P.S.R.T. has come up in this appeal.

4. The learned counsel for the appellant challenged the impugned order only on the ground that deceased was a causal labour, therefore he could not have been legally deemed as workman as per term defined in section 2 (n) of the Act and the learned Commissioner has wrongly held the U.P.S.R.T.C. liable to pay compensation. We have perused the impugned judgment. We find that the learned Commissioner after scrutinizing the evidence recorded by the parties and on the basis of several case laws awarded the compensation to the applicant/respondent No.1. However, nothing has been shown to us on behalf of the appellant-U.P.S.R.T.C. so as to warrant any interference with the findings arrived at by the learned Commissioner in the case under appeal. The attention of the learned commissioner was also drawn to the provision of Sec.12(2) of the Workmen's Compensation Act, 1923 and the learned Commissioner was fully agreed to the contention made by the learned counsel for the appellant and provided that the

principal can recover the amount of compensation from the contractor by way of proceedings against him in the competent court. Section 12(2) of the Workmen's Compensation Act reads as under:-

> *"Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contactor from whom the workman could have recovered compensation, and all question as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.*

5. Therefore, we find no illegality or infirmity in the impugned order. The appeal has no force and deserves dismissal.

5. The appeal is dismissed. The order impugned in this appeal is affirmed. The amount of compensation deposited in the appeal is transmitted to the concerned court. No order as to costs.

(B. S. Verma, J.) **(P.C. Verma, J.)**

P.Singh